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**SENSITIVE**  
**FEDERAL ELECTION COMMISSION**  
999 E Street, N.W.  
Washington, D.C. 20463

**CELA**

**FIRST GENERAL COUNSEL'S REPORT**

RR 14L-02

DATE OF REFERRAL: 2/26/14

DATE OF NOTIFICATION: 3/5/14

5/28/14

DATE OF LAST RESPONSE: 7/17/14

DATE ACTIVATED: 7/28/14

ELECTION CYCLE: 2012

EXPIRATION OF SOL: 3/6/2017

**RESPONDENTS:**

Flemming for Congress and Martha Flemming in  
her official capacity as treasurer

Spanky, LLC

**RELEVANT STATUTES  
AND REGULATIONS:**

52 U.S.C. § 30101(8)(A)<sup>1</sup>

52 U.S.C. § 30101(8)(B)(vii)

52 U.S.C. § 30101(8)(B)(xiv)

52 U.S.C. § 30116(a)

52 U.S.C. § 30116(f)

11 C.F.R. § 100.52(a)

11 C.F.R. § 100.52(b)

11 C.F.R. § 100.82

11 C.F.R. § 100.83

11 C.F.R. § 103.3(b)(3)

11 C.F.R. § 110.1(b)

11 C.F.R. § 110.9

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

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COMMISSION  
SECRETARIAT

<sup>1</sup> On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 to new Title 52 of the United States Code.

**I. INTRODUCTION**

The information in this Report was ascertained by the Commission's Reports Analysis Division in the normal course of carrying out its supervisory functions and referred to the Office of the General Counsel.<sup>2</sup> The information in the referral shows that Flemming for Congress accepted excessive contributions totaling \$198,200 from Spanky, LLC, in violation of 52 U.S.C. § 30116<sup>3</sup> (formerly 2 U.S.C. § 441a), and that the Committee failed to refund \$146,400 of this amount within 60 days of its receipt of the excessive contributions, as required by Commission regulation.<sup>4</sup>

Accordingly, we recommend that the Commission open a MUR and find reason to believe that Flemming for Congress violated 52 U.S.C. § 30116(f) (formerly 2 U.S.C. § 441a(f)) and 11 C.F.R. § 110.9 by knowingly accepting an excessive contribution. We further recommend that the Commission find reason to believe that Spanky, LLC, violated 52 U.S.C. § 30116(a) (formerly 2 U.S.C. § 441a(a)) and 11 C.F.R. § 110.1(b) by making an excessive contribution to the Committee and authorize an investigation to obtain additional information about Spanky, LLC, needed to determine the full scope of the violations, including whether its members also made excessive contributions to the Committee.

**II. FACTS**

Flemming for Congress and Martha Flemming in her official capacity as treasurer (the "Committee") was the authorized committee for Stanley Flemming during his 2012

<sup>2</sup> Reports Analysis Division, Referral of Flemming for Congress, 14L-02 (February 24, 2014) ("RAD Referral"), incorporated herein by reference.

<sup>3</sup> See 11 C.F.R. §§ 110.1(b), 110.9.

<sup>4</sup> See *id.* § 103.3(b)(3).

1 Congressional primary campaign in Washington's 10th Congressional district.<sup>5</sup> The Committee  
2 received two loans totaling \$200,700 from "Spanky, LLC," a limited liability company that was  
3 organized in California on February 13, 2012.<sup>6</sup> The first loan was made on March 6, 2012, for  
4 \$100,700 ("March Loan"), and the second loan was made on June 28, 2012, for \$100,000 ("June  
5 Loan").<sup>7</sup> On July 5, 2012, the Committee made a \$150,000 disbursement to Spanky, which it  
6 reported as repayment on the March Loan.<sup>8</sup>

7 The Reports Analysis Division ("RAD") sent a series of Requests for Additional  
8 Information ("RFAI") to the Committee regarding the loans which notified the Committee that  
9 the loans appeared to constitute excessive contributions, asked whether Spanky was treated as a  
10 corporation or as a partnership for tax purposes, and asked the Committee to file a Schedule C-1  
11 detailing the terms of the loan or provide other clarifying information.<sup>9</sup> In response to these  
12 questions, the Committee asserts that "the campaign was told Spanky is treated for tax purposes  
13 as a partnership and not a corporation. Spanky was formed for the purpose of funding various

<sup>5</sup> See Statement of Organization (Dec. 16, 2011).

<sup>6</sup> David Loftus filed the response on behalf of Spanky and is listed as its registered agent, but the identity of Spanky's principal(s) is (are) not known. <http://kepler.sos.ca.gov/>. Spanky was reportedly formed by Sherry Hackett, the widow of the late comedian Buddy Hackett. Mike Baker, *Atypical Loan Aids Wash. Congressional Hopeful*, THE SEATTLE TIMES, Aug. 1, 2012, available at [http://seattletimes.com/html/localnews/2018823410\\_apwa10thdistrictloan1stdwritethru.html](http://seattletimes.com/html/localnews/2018823410_apwa10thdistrictloan1stdwritethru.html). In the response filed on behalf of Spanky, Loftus explains that the "Flemming campaign" approached him for a loan and "after receiving advise [sic] from legal counsel, Spanky, llc [sic] funded a loan to the campaign and Stan Flemming." Spanky Resp. at 1.

<sup>7</sup> See Committee 2012 April Quarterly Report, 11; Committee 2012 July Quarterly Report, 11. Spanky states in its response that the June Loan was for \$150,000, and the July repayment was for \$200,000. Spanky Resp. at 1. Spanky did not include any supporting documentation for these figures.

<sup>8</sup> See Committee 2012 Pre-Primary Report, 12, 16; Committee Termination Report, 7-8, 12-17 (Nov. 14, 2013).

<sup>9</sup> RFAI – Committee 2012 April Quarterly Report (Sep. 19, 2012); RFAI – Committee 2012 April Quarterly Report (Aug. 7, 2013); RFAI – Committee 2012 July Quarterly Report (Sep. 19, 2012); RFAI – Committee 2012 July Quarterly Report (Aug. 7, 2013).

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1 projects including but not limited to political campaigns. The loan to Flemming for Congress  
2 was not the first loan nor is it the only or last loan from this group.”<sup>10</sup>

3 Ultimately, RAD informed the Committee that it would be referred for further  
4 Commission action if the excessive contributions were not refunded.<sup>11</sup> Stanley Flemming  
5 contacted RAD and stated that he wished to terminate the Committee, and RAD informed him  
6 that the Committee could not terminate until the issue relating to the apparently impermissible  
7 loans from Spanky could be resolved.<sup>12</sup> The Committee submitted a 2013 Termination Report,  
8 which disclosed a \$60,000 repayment to Spanky made on August 30, 2013, and included  
9 Schedules C and C-1 for the total of \$200,000 that Spanky loaned to the committee and copies of  
10 the Loan Agreement and Promissory Note for the \$100,700 March Loan from Spanky.<sup>13</sup>

11 **III. ANALYSIS**

12 A contribution is any gift, subscription, *loan*, advance, or deposit of money or anything of  
13 value made by any person for the purpose of influencing any election for Federal office.<sup>14</sup>

14 A loan is a contribution at the time it is made and is a contribution to the extent it remains  
15 unpaid<sup>15</sup> unless it fits within an exception from the definition of contribution.<sup>16</sup> A loan that

<sup>10</sup> Form 99, Flemming for Congress (Oct. 24, 2012). The Committee also amended its 2012 July Quarterly Report to include a memo text clarifying that Spanky is treated as a partnership for tax purposes and not a corporation. See Amended July 2012 Quarterly Report, 19.

<sup>11</sup> RAD Referral at 5.

<sup>12</sup> *Id.*

<sup>13</sup> Termination Report, Flemming for Congress (Nov. 14, 2013). In response, RAD reiterated through an RFAI and by phone conversation with Flemming that the Committee would not be permitted to terminate until all outstanding issues were resolved. RAD Referral at 4 (Flemming for Congress).

<sup>14</sup> 52 U.S.C. § 30101(8)(A)(i) (emphasis added) (formerly 2 U.S.C. § 431(8)(A)(i)).

<sup>15</sup> *Id.* § 100.52(b)(2).

<sup>16</sup> See, e.g., 52 U.S.C. § 30101(8)(B)(vii) (formerly 2 U.S.C. § 431(8)(B)(vii)), 11 C.F.R. § 100.82 (the term “contribution” does not include loans made by a State bank, federally chartered depository institution, or a

1 exceeds the contribution limits of 52 U.S.C. § 30116 (formerly 2 U.S.C. § 441a) and 11 C.F.R.  
2 § 110 (\$2,500 at the time Spanky made the loans to the Committee) is unlawful whether or not it  
3 is repaid.<sup>17</sup> A contribution from an LLC that elects to be treated as a partnership shall be  
4 attributed to its members in direct proportion to their share of the profits, or by agreement of the  
5 partners, subject to restrictions,<sup>18</sup> or, in the case of a single-member LLC, to its sole member.<sup>19</sup>  
6 Contributions which on their face exceed the contribution limitations must be redesignated,  
7 reattributed, or refunded within 60 days of receipt.<sup>20</sup>

8 The loans from Spanky to the Committee were contributions because it does not appear  
9 that any exceptions to the definition of contribution apply. Specifically, no available information  
10 suggests that Spanky is a state bank or federally chartered or insured depository institution such  
11 that it may make loans that are exempt from the definition of contribution under 11 C.F.R.  
12 § 100.82. Nor is there information to suggest that the loans to the Committee derived from lines  
13 of credit available to the candidate such that they would be exempt from the definition of  
14 contribution under 11 C.F.R. § 100.83.<sup>21</sup>

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depository institution the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration); 52 U.S.C. § 30101(8)(B)(xiv) (formerly 2 U.S.C. § 431(8)(B)(xiv)), 11 C.F.R. § 100.83 (the term "contribution" does not include loans derived from lines of credit available to the candidate).

<sup>17</sup> 11 C.F.R. § 100.52(b)(1).

<sup>18</sup> *Id.* § 110.1(g)(2), (e)(1)-(2).

<sup>19</sup> *Id.* § 110.1(g)(4).

<sup>20</sup> *Id.* § 103.3(b)(3).

<sup>21</sup> The exemption in section 100.83 was created in deference to the "various lines of credit" offered by "commercial banks" to their customers, *see* Explanation & Justification, Brokerage Loans and Lines of Credit, 67 Fed. Reg. 38,353 (June 4, 2002), but as noted above, Spanky, so far as we know, is not a "commercial bank." Further, the Commission has noted that even though section 100.83 exempts brokerage loans, credit card advances, and other lines of credit extended to candidates from the requirements of bank loans, "[i]t is important to note that [the requirements of bank loans as set forth in 100.82] will still apply to all loans and lines of credit made to a political committee and to conventional bank loans made to a candidate." *Id.* (emphasis added).

1 Further, the amounts of the loans were in excess of the Act's limits.<sup>22</sup> The Committee  
2 asserts that Spanky is taxed as a partnership.<sup>23</sup> Based on this information, Spanky could lawfully  
3 contribute \$2,500 to the Committee for the 2012 Primary Election.<sup>24</sup> In that case, the \$100,700  
4 March Loan exceeded the Act's limit by \$98,200, and all \$100,000 of the June Loan exceeded  
5 the Act's limit.<sup>25</sup> Thus it appears that Spanky made, and the Committee accepted, excessive  
6 contributions.<sup>26</sup> However, the Committee's July repayment of \$150,000 for the March loan  
7 occurred 121 days after receipt of the loan, so it provided a late remedy for the \$98,200  
8 excessive amount of the March Loan.<sup>27</sup> The Committee also made the repayment seven days  
9 after it received the June Loan from Spanky, so the balance of the repayment for the March loan  
10 (\$51,800) provided a timely remedy for the June Loan, leaving an excessive balance of \$48,200  
11 from the June Loan. Further the Committee's August 2013 repayment of \$60,000 provided a  
12 late remedy for the remaining \$48,200 of the June Loan. Thus the total amount of Spanky's  
13 excessive contributions to the Committee that was not refunded within 60 days is \$146,400  
14 (\$98,200 + \$48,200).

15 Based on this information, we recommend that the Commission find reason to believe  
16 that Spanky, LLC, violated 52 U.S.C. § 30116(a) (formerly 2 U.S.C. § 441a(a)) by making an

<sup>22</sup> 52 U.S.C. § 30116 (formerly 2 U.S.C. § 441a); 11 C.F.R. § 110.

<sup>23</sup> Spanky, LLC's response to the referral is silent as to whether it is taxed as a partnership or a corporation. If the Commission approves our proposed investigation in this matter, Spanky LLC's status will be confirmed.

<sup>24</sup> 52 U.S.C. § 30116(a) (formerly 2 U.S.C. § 441a(a)); 11 C.F.R. § 110.1(b).

<sup>25</sup> *Id.*

<sup>26</sup> See MUR 5496 (Huffman for Congress) (\$100,000 loan from the committee's treasurer to the candidate, then to the committee, was a section 30116 (formerly section 441a) violation by the treasurer); MUR 5685 (Joe Turnham for Congress) (loan from candidate's father/treasurer to candidate, then to committee, was a section 30116 (formerly section 441a) violation by the father/treasurer).

<sup>27</sup> RAD Referral, Attachment 3, note 1; see Committee 2012 Pre-Primary Report, 16.

1 excessive contribution to the Committee and the Committee violated 52 U.S.C. § 30116(f)  
2 (formerly 2 U.S.C. § 441a(f)) by knowingly accepting an excessive contribution.

3 **IV. PROPOSED INVESTIGATION**

4 To fully identify the source of the excessive contributions and the scope of the violations,  
5 we need additional information about Spanky. Though it is apparent that Spanky made the loan  
6 to the Committee, if it is indeed taxed as a partnership, we do not know the identity of the  
7 member or members of Spanky, or how the contribution was attributed among the members.  
8 Because contributions by LLCs that elect to be taxed as a partnership are properly attributed to  
9 the LLC *and* its member(s) (in proportion to each member's share in the profits, or by agreement  
10 of the members) that information is necessary to fully assess the violations here, including  
11 whether that attribution resulted in excessive contributions by any individual members.<sup>28</sup>

12 Therefore, we would seek to confirm Spanky's tax status and, if applicable, obtain information  
13 about Spanky's membership (likely from its known principal, David Loftus).<sup>29</sup>

14 We plan to conduct our discovery using informal methods. We request, however, that the  
15 Commission authorize the use of compulsory process, including the issuance of appropriate  
16 interrogatories, document subpoenas, and deposition subpoenas, as necessary.

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<sup>28</sup> 11 C.F.R. § 110.1(e), (g)(4).

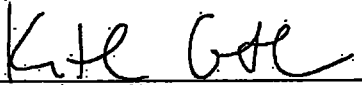
<sup>29</sup> We note for the Commission that certain facts could be discovered in the course of the investigation – such as how many principals Spanky has, or how it is taxed – that could present other violations, *e.g.*, a violation of 52 U.S.C. § 30118 (formerly 2 U.S.C. § 441b), or 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f) (contribution in the name of another). In that event, we would bring that information to the Commission's attention and make appropriate recommendations at that time.


V. RECOMMENDATIONS

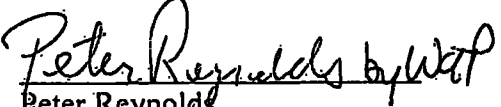
1. Open a MUR.
2. Find reason to believe Flemming for Congress and Martha Flemming in her official capacity as treasurer violated 52 U.S.C. § 30116(f) (formerly 2 U.S.C. § 441a(f)) and 11 C.F.R. § 110.9.
3. Find reason to believe Spanky, LLC violated 52 U.S.C. § 30116(a) (formerly 2 U.S.C. § 441a(a)) and 11 C.F.R. § 110.1(b).
4. Approve the attached Factual and Legal Analyses.
5. Authorize the use of compulsory process.
6. Approve the appropriate letters.

Daniel A. Petalas  
Associate General Counsel for Enforcement

11-26-14  
Date

  
Kathleen Guith  
Deputy Associate General Counsel for  
Enforcement

  
William A. Powers  
Assistant General Counsel

  
Peter Reynolds  
Attorney

Attachment: Factual and Legal Analysis – Flemming for Congress  
Factual and Legal Analysis – Spanky, LLC



1 **FEDERAL ELECTION COMMISSION**

2  
3 **FACTUAL AND LEGAL ANALYSIS**

4  
5 RESPONDENT: Flemming for Congress and Martha Flemming RR 14L-02  
6 in her official capacity as treasurer  
7

8 **I. INTRODUCTION**

9 This matter was generated by the Commission's Reports Analysis Division in the normal  
10 course of carrying out its supervisory functions and referred to the Office of the General  
11 Counsel.<sup>1</sup> The information in the referral shows that Flemming for Congress and Martha  
12 Flemming in her official capacity as treasurer (the "Committee") accepted excessive  
13 contributions totaling \$198,200 and failed to refund \$146,400 of this amount within 60 days of  
14 receipt as required by Commission regulation.<sup>2</sup> Accordingly, the Commission elects to open a  
15 MUR and finds reason to believe that the Committee violated 52 U.S.C. § 30116(f) (formerly 2  
16 U.S.C. § 441a(f))<sup>3</sup> and 11 C.F.R. § 110.9 by knowingly accepting an excessive contribution.

17 **II. FACTS**

18 Flemming for Congress and Martha Flemming in her official capacity as treasurer (the  
19 "Committee") was the authorized committee for Stanley Flemming during his 2012  
20 Congressional primary campaign in Washington's 10th Congressional district.<sup>4</sup> The Committee  
21 received two loans totaling \$200,700 from "Spanky, LLC," a limited liability company that was

<sup>1</sup> Reports Analysis Division, Referral of Flemming for Congress, 14L-02 (February 24, 2014) ("RAD Referral").

<sup>2</sup> See *id.* § 103.3(b)(3).

<sup>3</sup> On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 to new Title 52 of the United States Code.

<sup>4</sup> See Statement of Organization (Dec. 16, 2011):

1 organized in California on February 13, 2012.<sup>5</sup> The first loan was made on March 6, 2012, for  
2 \$100,700 ("March Loan"), and the second loan was made on June 28, 2012, for \$100,000 ("June  
3 Loan").<sup>6</sup> On July 5, 2012, the Committee made a \$150,000 disbursement to Spanky, which it  
4 reported as repayment on the March Loan.<sup>7</sup>

5 The Reports Analysis Division ("RAD") sent a series of Requests for Additional  
6 Information ("RFAI") to the Committee regarding the loans which notified the Committee that  
7 the loans appeared to constitute excessive contributions, asked whether Spanky was treated as a  
8 corporation or as a partnership for tax purposes, and asked the Committee to file a Schedule C-1  
9 detailing the terms of the loan or provide other clarifying information.<sup>8</sup> In response to these  
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11 as a partnership and not a corporation. Spanky was formed for the purpose of funding various  
12 projects including but not limited to political campaigns. The loan to Flemming for Congress  
13 was not the first loan nor is it the only or last loan from this group."<sup>9</sup>

<sup>5</sup> David Loftus is listed as its registered agent, but the identity of Spanky's principal(s) is (are) not known. <http://kepler.sos.ca.gov/>. Spanky was reportedly formed by Sherry Hackett, the widow of the late comedian Buddy Hackett. Mike Baker, *Atypical Loan Aids Wash. Congressional Hopeful*, THE SEATTLE TIMES, Aug. 1, 2012, available at [http://seattletimes.com/html/localnews/2018823410\\_apwa10thdistrictloan1stdwriethru.html](http://seattletimes.com/html/localnews/2018823410_apwa10thdistrictloan1stdwriethru.html).

<sup>6</sup> See Committee 2012 April Quarterly Report, 11; Committee 2012 July Quarterly Report, 11.

<sup>7</sup> See Committee 2012 Pre-Primary Report, 12, 16; Committee Termination Report, 7-8, 12-17 (Nov. 14, 2013).

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1 Ultimately, RAD informed the Committee that it would be referred for further  
2 Commission action if the excessive contributions were not refunded.<sup>10</sup> Stanley Flemming  
3 contacted RAD and stated that he wished to terminate the Committee, and RAD informed him  
4 that the Committee could not terminate until the issue relating to the apparently impermissible  
5 loans from Spanky could be resolved.<sup>11</sup> The Committee submitted a 2013 Termination Report,  
6 which disclosed a \$60,000 repayment to Spanky made on August 30, 2013, and included  
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8 the Loan Agreement and Promissory Note for the \$100,700 March Loan from Spanky.<sup>12</sup>

### 9 III. ANALYSIS

10 A contribution is any gift, subscription, *loan*, advance, or deposit of money or anything of  
11 value made by any person for the purpose of influencing any election for Federal office.<sup>13</sup>

12 A loan is a contribution at the time it is made and is a contribution to the extent it remains  
13 unpaid<sup>14</sup> unless it fits within an exception from the definition of contribution.<sup>15</sup> A loan that  
14 exceeds the contribution limits of 52 U.S.C. § 30116 (formerly 2 U.S.C. § 441a) and 11 C.F.R.  
15 § 110 (\$2,500 at the time Spanky made the loans to the Committee) is unlawful whether or not it

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<sup>10</sup> RAD Referral at 5.

<sup>11</sup> *Id.*

<sup>12</sup> Termination Report, Flemming for Congress (Nov. 14, 2013). In response, RAD reiterated through an RFAI and by phone conversation with Flemming that the Committee would not be permitted to terminate until all outstanding issues were resolved. RAD Referral at 4 (Flemming for Congress).

<sup>13</sup> 52 U.S.C. § 30101(8)(A)(i) (emphasis added) (formerly 2 U.S.C. § 431(8)(A)(i)).

<sup>14</sup> *Id.* § 100.52(b)(2).

<sup>15</sup> See, e.g., 52 U.S.C. § 30101(8)(B)(vii) (formerly 2 U.S.C. § 431(8)(B)(vii)), 11 C.F.R. § 100.82 (the term "contribution" does not include loans made by a State bank, federally chartered depository institution, or a depository institution the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration); 52 U.S.C. § 30101(8)(B)(xiv) (formerly 2 U.S.C. § 431(8)(B)(xiv)), 11 C.F.R. § 100.83 (the term "contribution" does not include loans derived from lines of credit available to the candidate).

1 is repaid.<sup>16</sup> A contribution from an LLC that elects to be treated as a partnership shall be  
2 attributed to its members in direct proportion to their share of the profits, or by agreement of the  
3 partners, subject to restrictions,<sup>17</sup> or, in the case of a single-member LLC, to its sole member.<sup>18</sup>  
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5 reattributed, or refunded within 60 days of receipt.<sup>19</sup>

6 The loans from Spanky to the Committee were contributions because it does not appear  
7 that any exceptions to the definition of contribution apply. Specifically, no available information  
8 suggests that Spanky is a state bank or federally chartered or insured depository institution such  
9 that it may make loans that are exempt from the definition of contribution under 11 C.F.R.  
10 § 100.82. Nor is there information to suggest that the loans to the Committee derived from lines  
11 of credit available to the candidate such that they would be exempt from the definition of  
12 contribution under 11 C.F.R. § 100.83.<sup>20</sup>

13 Further, the amounts of the loans were in excess of the Act's limits.<sup>21</sup> The Committee  
14 asserts that Spanky is taxed as a partnership.<sup>22</sup> Based on this information, Spanky could lawfully

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<sup>16</sup> 11 C.F.R. § 100.52(b)(1).

<sup>17</sup> *Id.* § 110.1(g)(2), (e)(1)-(2).

<sup>18</sup> *Id.* § 110.1(g)(4).

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<sup>20</sup> The exemption in section 100.83 was created in deference to the "various lines of credit" offered by "commercial banks" to their customers, *see* Explanation & Justification, Brokerage Loans and Lines of Credit, 67 Fed. Reg. 38,353 (June 4, 2002), but as noted above, Spanky, so far as we know, is not a "commercial bank." Further, the Commission has noted that even though section 100.83 exempts brokerage loans, credit card advances, and other lines of credit extended to candidates from the requirements of bank loans, "[i]t is important to note that [the requirements of bank loans as set forth in 100.82] will still apply to all loans and lines of credit made to a political committee and to conventional bank loans made to a candidate." *Id.* (emphasis added).

<sup>21</sup> 52 U.S.C. § 30116 (formerly 2 U.S.C. § 441a); 11 C.F.R. § 110.

<sup>22</sup> The Commission has no other information as to whether Spanky is taxed as a partnership or a corporation.

1 contribute \$2,500 to the Committee for the 2012 Primary Election.<sup>23</sup> In that case, the \$100,700  
2 March Loan exceeded the Act's limit by \$98,200, and all \$100,000 of the June Loan exceeded  
3 the Act's limit.<sup>24</sup> Thus it appears that Spanky made, and the Committee accepted, excessive  
4 contributions.<sup>25</sup> However, the Committee's July repayment of \$150,000 for the March loan  
5 occurred 121 days after receipt of the loan, so it provided a late remedy for the \$98,200  
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9 from the June Loan. Further the Committee's August 2013 repayment of \$60,000 provided a  
10 late remedy for the remaining \$48,200 of the June Loan. Thus the total amount of Spanky's  
11 excessive contributions to the Committee that was not refunded within 60 days is \$146,400  
12 (\$98,200 + \$48,200).

13 Based on this information, the Commission finds reason to believe that the Committee  
14 violated 52 U.S.C. § 30116(f) (formerly 2 U.S.C. § 441a(f)) by knowingly accepting an  
15 excessive contribution.

<sup>23</sup> 52 U.S.C. § 30116(a) (formerly 2 U.S.C. § 441a(a)); 11 C.F.R. § 110.1(b).

<sup>24</sup> *Id.*

<sup>25</sup> See MUR 5496 (Huffman for Congress) (\$100,000 loan from the committee's treasurer to the candidate, then to the committee, was a section 30116 (formerly section 441a) violation by the treasurer); MUR 5685 (Joe Turnham for Congress) (loan from candidate's father/treasurer to candidate, then to committee, was a section 30116 (formerly section 441a) violation by the father/treasurer).

<sup>26</sup> RAD Referral, Attachment 3, note 1; see Committee 2012 Pre-Primary Report, 16.

1 **FEDERAL ELECTION COMMISSION**

2  
3 **FACTUAL AND LEGAL ANALYSIS**

4  
5 RESPONDENTS: Spanky, LLC

RR 14L-02

6  
7 **I. INTRODUCTION**

8 This matter was generated by the Commission's Reports Analysis Division in the normal  
9 course of carrying out its supervisory functions and referred to the Office of the General

10 Counsel.<sup>1</sup> The information in the referral shows that Spanky, LLC, made excessive contributions  
11 totaling \$198,200. Accordingly, the Commission elects to open a MUR and finds reason to  
12 believe that Spanky, LLC, violated 52 U.S.C. § 30116(a) (formerly 2 U.S.C. § 441a(a)) and  
13 11 C.F.R. § 110.1(b).<sup>2</sup>

14 **II. FACTS**

15 Flemming for Congress and Martha Flemming in her official capacity as treasurer (the  
16 "Committee") was the authorized committee for Stanley Flemming during his 2012  
17 Congressional primary campaign in Washington's 10th Congressional district.<sup>3</sup> The Committee  
18 received two loans totaling \$200,700 from "Spanky, LLC," a limited liability company that was  
19 organized in California on February 13, 2012.<sup>4</sup> The first loan was made on March 6, 2012, for

<sup>1</sup> Reports Analysis Division, Referral of Flemming for Congress, 14L-02 (February 24, 2014) ("RAD Referral").

<sup>2</sup> On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 to new Title 52 of the United States Code.

<sup>3</sup> See Statement of Organization (Dec. 16, 2011).

<sup>4</sup> David Loftus filed the response on behalf of Spanky and is listed as its registered agent, but the identity of Spanky's principal(s) is (are) not known. <http://kepler.sos.ca.gov/>. Spanky was reportedly formed by Sherry Hackett, the widow of the late comedian Buddy Hackett. Mike Baker, *Atypical Loan Aids Wash. Congressional Hopeful*, THE SEATTLE TIMES, Aug. 1, 2012, available at [http://seattletimes.com/html/localnews/2018823410\\_apwa10thdistrictloan1stldwritethru.html](http://seattletimes.com/html/localnews/2018823410_apwa10thdistrictloan1stldwritethru.html). In the response filed on behalf of Spanky, Loftus explains that the "Flemming campaign" approached him for a loan and "after receiving advise [sic] from legal counsel, Spanky, llc [sic] funded a loan to the campaign and Stan Flemming." Spanky Resp. at 1.

1 \$100,700 ("March Loan"), and the second loan was made on June 28, 2012, for \$100,000 ("June  
2 Loan").<sup>5</sup> On July 5, 2012, the Committee made a \$150,000 disbursement to Spanky, which it  
3 reported as repayment on the March Loan.<sup>6</sup>

4 The Reports Analysis Division ("RAD") sent a series of Requests for Additional  
5 Information ("RFAI") to the Committee regarding the loans which notified the Committee that  
6 the loans appeared to constitute excessive contributions, asked whether Spanky was treated as a  
7 corporation or as a partnership for tax purposes, and asked the Committee to file a Schedule C-1  
8 detailing the terms of the loan or provide other clarifying information.<sup>7</sup> In response to these  
9 questions, the Committee asserts that "the campaign was told Spanky is treated for tax purposes  
10 as a partnership and not a corporation. Spanky was formed for the purpose of funding various  
11 projects including but not limited to political campaigns. The loan to Flemming for Congress  
12 was not the first loan nor is it the only or last loan from this group."<sup>8</sup>

13 Ultimately, RAD informed the Committee that it would be referred for further  
14 Commission action if the excessive contributions were not refunded.<sup>9</sup> Stanley Flemming  
15 contacted RAD and stated that he wished to terminate the Committee, and RAD informed him  
16 that the Committee could not terminate until the issue relating to the apparently impermissible

<sup>5</sup> See Committee 2012 April Quarterly Report, 11; Committee 2012 July Quarterly Report, 11. Spanky states in its response that the June Loan was for \$150,000, and the July repayment was for \$200,000. Spanky Resp. at 1. Spanky did not include any supporting documentation for these figures.

<sup>6</sup> See Committee 2012 Pre-Primary Report, 12, 16; Committee Termination Report, 7-8, 12-17 (Nov. 14, 2013).

<sup>7</sup> RFAI – Committee 2012 April Quarterly Report (Sep. 19, 2012); RFAI – Committee 2012 April Quarterly Report (Aug. 7, 2013); RFAI – Committee 2012 July Quarterly Report (Sep. 19, 2012); RFAI – Committee 2012 July Quarterly Report (Aug. 7, 2013).

<sup>8</sup> Form 99, Flemming for Congress (Oct. 24, 2012). The Committee also amended its 2012 July Quarterly Report to include a memo text clarifying that Spanky is treated as a partnership for tax purposes and not a corporation. See Amended July 2012 Quarterly Report, 19.

<sup>9</sup> RAD Referral at 5.

loans from Spanky could be resolved.<sup>10</sup> The Committee submitted a 2013 Termination Report, which disclosed a \$60,000 repayment to Spanky made on August 30, 2013, and included Schedules C and C-1 for the total of \$200,000 that Spanky loaned to the committee and copies of the Loan Agreement and Promissory Note for the \$100,700 March Loan from Spanky.<sup>11</sup>

### III. ANALYSIS

A contribution is any gift, subscription, *loan*, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.<sup>12</sup>

A loan is a contribution at the time it is made and is a contribution to the extent it remains unpaid<sup>13</sup> unless it fits within an exception from the definition of contribution.<sup>14</sup> A loan that exceeds the contribution limits of 52 U.S.C. § 30116 (formerly 2 U.S.C. § 441a) and 11 C.F.R. § 110 (\$2,500 at the time Spanky made the loans to the Committee) is unlawful whether or not it is repaid.<sup>15</sup> A contribution from an LLC that elects to be treated as a partnership shall be attributed to its members in direct proportion to their share of the profits, or by agreement of the partners, subject to restrictions,<sup>16</sup> or, in the case of a single-member LLC, to its sole member.<sup>17</sup>

<sup>10</sup> *Id.*

<sup>11</sup> Termination Report, Flemming for Congress (Nov. 14, 2013). In response, RAD reiterated through an RFAI and by phone conversation with Flemming that the Committee would not be permitted to terminate until all outstanding issues were resolved. RAD Referral at 4 (Flemming for Congress).

<sup>12</sup> 52 U.S.C. § 30101(8)(A)(i) (emphasis added) (formerly 2 U.S.C. § 431(8)(A)(i)).

<sup>13</sup> *Id.* § 100.52(b)(2).

<sup>14</sup> See, e.g., 52 U.S.C. § 30101(8)(B)(vii) (formerly 2 U.S.C. § 431(8)(B)(vii)), 11 C.F.R. § 100.82 (the term "contribution" does not include loans made by a State bank, federally chartered depository institution, or a depository institution the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration); 52 U.S.C. § 30101(8)(B)(xiv) (formerly 2 U.S.C. § 431(8)(B)(xiv)), 11 C.F.R. § 100.83 (the term "contribution" does not include loans derived from lines of credit available to the candidate).

<sup>15</sup> 11 C.F.R. § 100.52(b)(1).

<sup>16</sup> *Id.* § 110.1(g)(2), (e)(1)-(2).



Contributions which on their face exceed the contribution limitations must be redesignated, reattributed, or refunded within 60 days of receipt.<sup>18</sup>

The loans from Spanky to the Committee were contributions because it does not appear that any exceptions to the definition of contribution apply. Specifically, no available information suggests that Spanky is a state bank or federally chartered or insured depository institution such that it may make loans that are exempt from the definition of contribution under 11 C.F.R.

§ 100.82. Nor is there information to suggest that the loans to the Committee derived from lines of credit available to the candidate such that they would be exempt from the definition of contribution under 11 C.F.R. § 100.83.<sup>19</sup>

Further, the amounts of the loans were in excess of the Act's limits.<sup>20</sup> The Committee asserts that Spanky is taxed as a partnership.<sup>21</sup> Based on this information, Spanky could lawfully contribute \$2,500 to the Committee for the 2012 Primary Election.<sup>22</sup> In that case, the \$100,700 March Loan exceeded the Act's limit by \$98,200, and all \$100,000 of the June Loan exceeded the Act's limit.<sup>23</sup> Thus it appears that Spanky made, and the Committee accepted, excessive

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<sup>17</sup> *Id.* § 110.1(g)(4).

<sup>18</sup> *Id.* § 103.3(b)(3).

<sup>19</sup> The exemption in section 100.83 was created in deference to the "various lines of credit" offered by "commercial banks" to their customers, *see* Explanation & Justification, Brokerage Loans and Lines of Credit, 67 Fed. Reg. 38,353 (June 4, 2002), but as noted above, Spanky, so far as we know, is not a "commercial bank." Further, the Commission has noted that even though section 100.83 exempts brokerage loans, credit card advances, and other lines of credit extended to candidates from the requirements of bank loans, "[i]t is important to note that [the requirements of bank loans as set forth in 100.82] will still apply to all loans and lines of credit made to a political committee and to conventional bank loans made to a candidate." *Id.* (emphasis added).

<sup>20</sup> 52 U.S.C. § 30116 (formerly 2 U.S.C. § 441a); 11 C.F.R. § 110.

<sup>21</sup> Spanky, LLC's response to the referral is silent as to whether it is taxed as a partnership or a corporation.

<sup>22</sup> 52 U.S.C. § 30116(a) (formerly 2 U.S.C. § 441a(a)); 11 C.F.R. § 110.1(b).

<sup>23</sup> *Id.*

1 contributions.<sup>24</sup> However, the Committee's July repayment of \$150,000 for the March loan  
2 occurred 121 days after receipt of the loan, so it provided a late remedy for the \$98,200  
3 excessive amount of the March Loan.<sup>25</sup> The Committee also made the repayment seven days  
4 after it received the June Loan from Spanky, so the balance of the repayment for the March loan  
5 (\$51,800) provided a timely remedy for the June Loan, leaving an excessive balance of \$48,200  
6 from the June Loan. Further the Committee's August 2013 repayment of \$60,000 provided a  
7 late remedy for the remaining \$48,200 of the June Loan. Thus the total amount of Spanky's  
8 excessive contributions to the Committee that was not refunded within 60 days is \$146,400  
9 (\$98,200 + \$48,200).

10 Based on this information, the Commission finds reason to believe that Spanky, LLC,  
11 violated 52 U.S.C. § 30116(a) (formerly 2 U.S.C. § 441a(a)) by making an excessive  
12 contribution.

<sup>24</sup> See MUR 5496 (Huffman for Congress) (\$100,000 loan from the committee's treasurer to the candidate, then to the committee, was a section 30116 (formerly section 441a) violation by the treasurer); MUR 5685 (Joe Turnham for Congress) (loan from candidate's father/treasurer to candidate, then to committee, was a section 30116 (formerly section 441a) violation by the father/treasurer).

<sup>25</sup> RAD Referral, Attachment 3, note 1; see Committee 2012 Pre-Primary Report, 16.